

SHERWIN WILLIAMS CO

Form S-8

November 09, 2005

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As filed with the Securities and Exchange Commission on November 9, 2005

Registration No. 333-

**SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

THE SHERWIN-WILLIAMS COMPANY
(Exact name of registrant as specified in its charter)

Ohio
(STATE OR OTHER JURISDICTION OF
INCORPORATION OR ORGANIZATION) 34-0526850
(I.R.S. EMPLOYER IDENTIFICATION NO.)

101 Prospect Avenue, N.W., Cleveland, Ohio 44115
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES) (ZIP CODE)
**THE SHERWIN-WILLIAMS COMPANY 2005 DEFERRED COMPENSATION SAVINGS AND
PENSION EQUALIZATION PLAN**

**THE SHERWIN-WILLIAMS COMPANY 2005 KEY MANAGEMENT DEFERRED
COMPENSATION PLAN**

**THE SHERWIN-WILLIAMS COMPANY 2005 DIRECTOR
DEFERRED FEE PLAN**

(FULL TITLE OF THE PLANS)

L.E. STELLATO
Vice President, General Counsel and Secretary
THE SHERWIN-WILLIAMS COMPANY
101 Prospect Avenue, N.W.
Cleveland, Ohio 44115
(216) 566-2000

(NAME AND ADDRESS, INCLUDING ZIP CODE, AND
TELEPHONE NUMBER, INCLUDING AREA CODE, OF AGENT FOR SERVICE)
CALCULATION OF
REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per unit (1)(2)	Proposed maximum aggregate offering price (1)(2)	Amount of registration fee
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Deferred Compensation Obligations (3)	\$20,000,000	100%	\$20,000,000	\$2,354.00
Deferred Compensation Obligations (4)	\$15,000,000	100%	\$15,000,000	\$1,765.50
Deferred Compensation Obligations (5)	\$5,000,000	100%	\$5,000,000	\$588.50
Common Stock, \$1.00 per share (including Rights)(6)	100,000 Shares	\$41.96	\$4,196,000	\$493.87
Total Registration Fee	N/A	N/A	N/A	\$5,201.87

In addition, pursuant to Rule 416 under the Securities Act of 1933, as amended, this Registration Statement also covers an indeterminate amount of Deferred Compensation Obligations and additional shares of Common Stock as may be issuable as a result of the anti-dilution provisions of The Sherwin-Williams Company 2005 Deferred Compensation Savings and Pension Equalization Plan (the "Deferred Compensation Plan"), The Sherwin-Williams Company 2005 Key Management Deferred Compensation Plan (the "Key Management Plan") and The Sherwin-Williams Company 2005 Director Deferred Fee Plan (the "Director Deferred Fee Plan").

(1) Estimated solely for the purpose of determining the registration fee.

(2) In accordance with Rule 457 under the Securities Act of 1933, as amended, this figure relating to the registration of the Registrant's Common Stock is based on the average of the high and low prices of the Registrant's Common Stock as reported on the New York Stock Exchange on November 4, 2005, which date is within 5 business days prior to the date of the filing of this Registration Statement and is estimated solely for the purpose of determining the Registration Fee.

(3) The Deferred Compensation Obligations are unsecured obligations of the Registrant to pay deferred compensation in the future in accordance with the terms of the Deferred Compensation Plan.

(4) The Deferred Compensation Obligations are unsecured obligations of the Registrant to pay deferred compensation in the future in accordance with the terms of the Key Management Plan.

(5) The Deferred Compensation Obligations are unsecured obligations of the Registrant to pay deferred compensation in the future in accordance with the terms of the Director Deferred Fee Plan.

(6) The shares of Common Stock, par value \$1.00 per share, are issuable in accordance with the terms of the Director Deferred Fee Plan. Shares of Common Stock are accompanied by rights (the "Rights") to purchase Cumulative Redeemable Serial Preferred Stock of the Registrant issued pursuant to a Rights Agreement, dated as of April 23, 1997, between the Registrant and The Bank of New York, as successor rights agent to KeyBank National Association, filed as Exhibit 1 to Form 8-A, dated April 24, 1997. Until the occurrence of certain prescribed events, none of which has occurred, the Rights are not exercisable, are evidenced by the certificates representing the Common Stock, and will be transferred only with the Common Stock.

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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to the participants as specified by Rule 428(b)(1) of the Securities Act. Such documents and the documents incorporated by reference herein pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents filed by the Company with the Securities and Exchange Commission (the Commission) are incorporated herein by reference:

- (1) The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2004, filed with the Commission on March 10, 2005;
- (2) The Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2005, filed with the Commission on May 6, 2005;
- (3) The Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2005, filed with the Commission on August 8, 2005;
- (4) The Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005, filed with the Commission on November 9, 2005;
- (5) The Company's Current Reports on Form 8-K, dated February 2, 2005, April 20, 2005, May 27, 2005, July 20, 2005 and October 21, 2005;
- (6) The description of the Company's Common Stock included in the Company's Current Report on Form 8-K, dated June 10, 2004;
- (7) The description of the Rights associated with the Common Stock included in the Company's Registration Statement on Form 8-A filed with the Commission on April 24, 1997 under Section 12 of the Securities Exchange Act of 1934 (the Exchange Act); and
- (8) All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold.

Any statement contained in a document incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for

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purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

ITEM 4. DESCRIPTION OF SECURITIES.

Set forth below is a summary of the Deferred Compensation Obligations created pursuant to the Deferred Compensation Plan, the Key Management Plan and the Director Deferred Fee Plan (the Deferred Compensation Plan, the Key Management Plan and the Director Deferred Fee Plan are collectively hereinafter referred to as the Plans). This summary is qualified in its entirety by reference to the terms and conditions of the Plans, which are filed as exhibits to this Registration Statement and incorporated herein by reference.

A. The Deferred Compensation Plan and the Key Management Plan.

Certain employees of the Company and its subsidiaries are permitted to defer certain compensation pursuant to the Deferred Compensation Plan and the Key Management Plan. Participation in the Deferred Compensation Plan and the Key Management Plan is voluntary. Participants may elect to allocate deferred compensation into a variety of shadow investment options, which represent the primary asset classes (short term investments, bonds, stock, including a Sherwin-Williams stock fund, and lifestyle funds). When a participant makes a deferral election, the Company credits the value of such amount by book entry to the investment account for the participant. A participant may elect to transfer amounts credited to various investment accounts to other investment options on a daily basis. Participants are 100% vested in their account balances at all times.

The Deferred Compensation Plan and the Key Management Plan are intended to be unfunded plans for purposes of the Employee Retirement Income Security Act of 1974, as amended. The participants are unsecured general creditors of the Company and are not protected against loss of benefits in the case of the Company's insolvency or bankruptcy. The Company has established one or more trust fund(s) for the purpose of providing a source from which to pay benefits under the Deferred Compensation Plan and the Key Management Plan, provided however, that the trusts are at all times subject to the claims of the Company's creditors in the event of the Company's insolvency or bankruptcy.

The value of the participant's account ordinarily will be distributed to the participant or the participant's beneficiary (in the case of death) upon a participant's termination of employment. In limited circumstances of severe financial hardship or disability, a participant may be permitted to make a withdrawal in cash prior to termination of his or her employment. In the event of a Change of Control of the Company, as defined in the applicable Plan, deferred amounts shall be immediately distributed to the participants. No amount payable to a participant or a beneficiary under the Plans will be subject in any manner to anticipation, alienation, garnishment, sale, transfer, assignment (either at law or in equity), levy, executions, pledge, encumbrance, charge or any other legal or equitable process by a participant or beneficiary.

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The Deferred Compensation Plan shall be administered by the Compensation and Management Development Committee of the Board of Directors of the Company. The Key Management Plan shall be administered by a committee composed of not less than three members of the Board of Directors as shall be appointed by the Board of Directors. The Company may amend or terminate the Deferred Compensation Plan at any time. The Board of Directors may terminate the Key Management Plan or may amend any provision of the Key Management Plan to such extent as the Board of Directors may in its sole discretion deem to be advisable and in the best interest of the Company, provided that no such amendment shall divest any participant or diminish his or her then interest under such Plan.

B. The Director Deferred Fee Plan.

Members of the Board of Directors of the Company who are not employees of the Company may defer all or a portion of their director's fees pursuant to the Director Deferred Fee Plan. Participation in the Director Deferred Fee Plan is voluntary. Participants may elect to allocate deferred director's fees into a deferred cash account, a common stock account or a shadow stock account. When a participant makes a deferral election, the Company credits the value of such amount by book entry to the investment account for the participant. A participant's election as to the investment options shall be irrevocable for the plan year, and deferred fees cannot be transferred between investment accounts.

The Company shall deposit into a trust the deferred director's fees, as well as all accrued interest relating to the deferred cash account and all dividends, distributions and appreciation in value relating to the common stock account and the shadow stock account. The trust shall be subject to the claims of the Company's creditors in the event of the Company's insolvency.

Payments of deferred fees will ordinarily commence to the participant or the participant's beneficiary (in the case of death) following the date the participant ceases to be a member of the Board of Directors of the Company. A participant will receive accrued benefits in cash, except that a participant will receive an in-kind distribution of the number of full shares of the Company's Common Stock (but only to the extent the trust is holding shares of Company Common Stock at the time of distribution) deemed to be credited to the participant's common stock account. In the event of a Change of Control of the Company, as defined in the Director Deferred Fee Plan, deferred amounts shall be immediately distributed to the participants. Neither a participant nor any beneficiary designated by the participant shall have any right to, directly or indirectly, alienate, assign or encumber any amount that is or may be payable under the Director Deferred Fee Plan.

The Director Deferred Fee Plan is administered by an administration committee, which consists of three or more members who may be, but are not required to be, directors or employees of the Company, one of whom shall be the Chief Executive Officer of the Company and the others of whom shall be appointed by the Chief Executive Officer of the Company. The Board of Directors of the Company may amend, suspend or terminate the Director Deferred Fee Plan at any time, provided that no such amendment, suspension or termination shall adversely effect the amounts in any then-existing account.

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ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Certain legal matters regarding the Deferred Compensation Obligations and shares of Common Stock being registered pursuant to this Registration Statement have been passed upon by L.E. Stellato, Vice President, General Counsel and Secretary of the Company. As of October 31, 2005, Mr. Stellato beneficially owned approximately 65,051 shares of Common Stock of the Company and held options to purchase an additional 151,886 shares of Common Stock. Mr. Stellato is not eligible to participate in any of the Plans.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Article IV of the Company's Regulations, as amended and restated April 28, 2004 (the "Regulations"), filed as Exhibit 3 to the Company's Current Report on Form 8-K, dated June 10, 2004, is incorporated herein by reference.

Reference is made to Section 1701.13(E) of the Ohio Revised Code relating to the indemnification of directors and officers of an Ohio corporation and to Sections 1 and 2 of Article IV of the Regulations.

The Ohio Revised Code permits and Section 1 of Article IV of the Regulations provides that the Company shall indemnify its directors, officers and employees against amounts which may be incurred in connection with certain actions, suits or proceedings under the circumstances as set out in Sections 1(a) and 1(b) of Article IV of the Regulations. However, the Ohio Revised Code and Section 1 of Article IV of the Regulations limit indemnification in respect of certain claims, issues or matters as to which such party is adjudged to be liable for negligence or misconduct in performance of his or her duty to the Company and also in actions in which the only liability asserted against a director is for certain statutory violations. The Ohio Revised Code and Section 1 of Article IV of the Regulations also provide that general indemnification provisions as found in Sections 1(a) and 1(b) of Article IV of the Regulations do not limit the remaining provisions of Article IV of the Regulations.

In addition, with certain limited exceptions, expenses incurred by a director in defending an action must be paid by the Company as they are incurred in advance of the final disposition if the director agrees (i) to repay such advances if it is proved by clear and convincing evidence that the director's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the Company or undertaken with reckless disregard for the Company's best interests and (ii) to reasonably cooperate with the Company concerning the action. Also, the Company may pay certain expenses incurred by an officer or employee in defending an action as they are incurred in advance of the final disposition of an action if the officer or employee receiving the advance undertakes to repay the advance if it is ultimately determined that the officer or employee receiving the advance is not entitled to indemnification.

The Company may from time to time maintain insurance on behalf of any person who is or was a director, officer or employee against any loss arising from any claim asserted against such director, officer or employee in any such capacity, subject to certain exclusions. The Company has entered into indemnification agreements with its directors and certain of its officers providing protection as permitted by law.

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ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

The exhibits listed in the Exhibit Index appearing on page II-9 are filed herewith or are incorporated by reference to other filings.

ITEM 9. UNDERTAKINGS.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement;

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high and of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Cleveland, and State of Ohio, on the 9th day of November, 2005.

THE SHERWIN-WILLIAMS COMPANY

By: /s/ L.E. Stellato
L.E. Stellato
Vice President, General Counsel and
Secretary

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the date indicated:

Officers and Directors of The Sherwin-Williams Company:

Signature	Title
*C. M. Connor	Chairman, President and Chief Executive Officer, Director (Principal Executive Officer)
C. M. Connor	
*S. P. Hennessy	Senior Vice President-Finance and Chief Financial Officer (Principal Financial Officer)
S. P. Hennessy	
*J. L. Ault	Vice President-Corporate Controller (Principal Accounting Officer)
J. L. Ault	
*J. C. Boland	Director
J. C. Boland	
*D. E. Evans	Director
D. E. Evans	
*D. F. Hodnik	Director
D. F. Hodnik	
*S. J. Kropf	Director
S. J. Kropf	
*R. W. Mahoney	Director

R. W. Mahoney

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Signature	Title
*G. E. McCullough	Director
G. E. McCullough	
*A. M. Mixon, III	Director
A. M. Mixon, III	
*C. E. Moll	Director
C. E. Moll	
*R. K. Smucker	Director
R. K. Smucker	
* The undersigned, by signing his name hereto, does sign this Registration Statement on behalf of the designated Officers and Directors of The Sherwin-Williams Company pursuant to Powers of Attorney executed on behalf of each of such Officers and Directors that are filed as Exhibits hereto.	

By: /s/ L. E. November 9, 2005
Stellato

L. E. Stellato,
Attorney-in-Fact

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EXHIBIT INDEX

EXHIBIT NO. EXHIBIT DESCRIPTION

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|-------|---|
| 4(a) | The Sherwin-Williams Company 2005 Deferred Compensation Savings and Pension Equalization Plan filed as Exhibit 10(e) to the Company's Current Report on Form 8-K dated July 20, 2005, and incorporated herein by reference. |
| 4(b) | The Sherwin-Williams Company 2005 Key Management Deferred Compensation Plan filed as Exhibit 10(f) to the Company's Current Report on Form 8-K dated July 20, 2005, and incorporated herein by reference. |
| 4(c) | The Sherwin-Williams Company 2005 Director Deferred Fee Plan, filed as Exhibit 10(g) to the Company's Current Report on Form 8-K dated July 20, 2005, and incorporated herein by reference. |
| 5 | Opinion of L. E. Stellato, General Counsel to the Company, including consent, dated November 9, 2005 (filed herewith). |
| 23(a) | Consent of Ernst & Young LLP, independent registered public accounting firm (filed herewith). |
| 23(b) | Consent of L. E. Stellato (set forth in his opinion filed herewith as Exhibit 5). |
| 24(a) | Powers of Attorney of officers and directors of the Company (filed herewith). |
| 24(b) | Certified resolutions of the Board of Directors of the Company authorizing execution by Power of Attorney (filed herewith). |

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